IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Crl.MC.No. 3759 of 2007()

CC.1355/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER: ACCUSED:

THOMAS T.S. @ SAJI, S/O.SCARIA THOMAS,
THANNIPARA HOUSE, ANKKARA P.O., KUMALI,
IDUKKI DISTRICT.

BY ADV. SRI.RENJITH B.MARAR
SRI.L.RAJESH NARAYAN
SMT.LAKSHMI.N.KAIMAL

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3759 of 2007

Dated this the 17th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2004 as can be seen from the number assigned to the case - C.C.1355 of 2004. The petitioner did not appear till 23.11.07. According to him, he was not informed of the pendency of the case till then. He surrendered on 23.11.07. He was enlarged on bail. On 30.11.07, the next date to which the case was posted, the petitioner and his counsel could not appear. The counsel had made arrangements to report this fact to the court. The case was then adjourned to 03.12.07, then to 04.12.07 and then to 05.12.07. On all these dates, the petitioner and his counsel could not appear. Non bailable warrant has been issued against the petitioner and the case now stands posted to 24.12.07.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His omission/failure to appear was not wilful or deliberate. The petitioner is willing to appear

before the learned Magistrate and seek regular bail, but he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further apprehends that before he reaches the learned Magistrate to surrender, he may be taken into custody and subjected to vexatious detention. He further wants to apply under Section 205 Cr.P.C to be exempted from personal appearance also.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before

the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 24.12.07. On or before that date, the petitioner must surrender before the learned Magistrate and seek regular bail.

6. After so surrendering, the petitioner can apply for exemption from personal appearance and in the facts and circumstances where the allegation is raised only under Section 138 of the Negotiable Instruments Act, I can find no reason why such a prayer should not be allowed by the learned Magistrate. It is for the learned Magistrate to pass appropriate orders on merits and in accordance with law.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-